

VZCZCXRO1538  
PP RUEHMA RUEHPA  
DE RUEHDK #0451 1091016  
ZNR UUUUU ZZH  
P 181016Z APR 08  
FM AMEMBASSY DAKAR  
TO RUEHC/SECSTATE WASHDC PRIORITY 0343  
INFO RUEHZK/ECOWAS COLLECTIVE PRIORITY

UNCLAS DAKAR 000451

SIPDIS

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SENSITIVE

DEPT FOR AF/W, AF/RSA, DRL AND INR/AA

E.O. 12958: N/A  
TAGS: [PGOV](#) [PREL](#) [PINS](#) [KDEM](#) [ECON](#) [SG](#)  
SUBJECT: SENEGAL-THE RETURN OF THE SUPREME COURT

REF: 07 DAKAR 2334

¶1. (SBU) Summary: On April 8, the Senegalese National Assembly passed a law reforming the judicial system to reinstate a Supreme Court. According to the government, this will streamline the system by allowing budgetary savings and harmonizing jurisprudence. The Association of Judges called the reform a "prehistoric" move to reward a coterie of judges devoted to the ruling party. End Summary.

The Supreme Court is back  
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¶2. (SBU) Law 20-2008, creating the Supreme Court, merged the former "Cour de Cassation" and the Council of State. The Cour de Cassation was the highest Court of Appeals for criminal and civil cases while the Council of State had jurisdiction over Administrative and pre-electoral litigation. One of the key results of the reform is that the Head of State will appoint the President of the Supreme Court who, as head of the judicial branch, will from now on be his sole interlocutor.

The French model  
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¶3. (SBU) From its independence in 1960 to 1992, Senegal had a Supreme Court that was highly respected by Senegalese people. But in 1992, arguing that judges needed specialization, President Diouf eliminated the Supreme Court and introduced a French model, which includes four high courts: the Cour de Cassation, the Council of State, the Constitutional Council, and the Accounting Court.

A Hybrid System  
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¶4. (SBU) Unlike the unified model of the '60s, the new Supreme Court will not rule on constitutional issues, which remain under the jurisdiction of the Constitutional Council. The Accounting Court, responsible for ensuring transparent use of public funds, will also remain a separate jurisdiction. This reform eliminates the duality of jurisdictions at the apex of the judiciary. In France, the legal system is dual with, on the one hand, judicial courts and, on the other, administrative courts. Senegal has unity in its lower courts but duality in its highest-level administrative and judicial courts. Now the unity of the whole system has been restored. The government has indicated that this is a first step in the reform and did not rule unifying all courts under one Supreme Court.

Association of Judges Against Reform  
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¶5. (SBU) The National Association of Judges considers the reform a step backward. They argue that instead the government should create lower level administrative and regional accounting courts. Regional accounting courts would then allow for the verification of the accounts of local governments, which the current Accounting Court

based in Dakar cannot do with its limited resources and large responsibilities. Deflecting criticism of this reform, President Wade himself said that the Council of State has only ruled on eleven cases in 2007 and that it was so inefficient that he could not justify its existence as a separate jurisdiction.

Comment

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¶6. (SBU) The move to bring back the Supreme Court is part of the symbolic response that the government is giving to those demanding the streamlining of government operations. It has the merit of restoring unity as Senegalese institutions are not robust enough to warrant a separate system of administrative courts as in France. However, the reform fails to address the deep problems of corruption, the lack independence of judges, interference of the Executive branch, and administrative inefficiency. The most needed reform is the elimination of the High Conference of the Judiciary (Haut Conseil de la magistrature); a body that is chaired by the Head of State and which manages the careers of judges (reftel). Without this reform, the judiciary will remain under the firm control of the Executive thus perpetuating doubts as to its independence and immunity from influence. End Comment.

SMITH